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17  
18 **UNITED STATES DISTRICT COURT**

19 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

20 CISCO SYSTEMS, INC.,

21 Plaintiff,

22 vs.

23 ARISTA NETWORKS, INC.,

24 Defendant.

CASE NO. 5:14-cv-5344-BLF

**DECLARATION OF MARK TUNG IN  
SUPPORT OF CISCO'S OPPOSITION TO  
ARISTA'S MOTION TO AMEND  
SCHEDULING ORDER**

1 I, Mark Tung, declare as follows:

2 1. I am an attorney-at-law, duly licensed to practice before this Court, and am an  
3 attorney with the law firm of Quinn Emanuel Urquhart & Sullivan LLP, attorneys for Plaintiff  
4 Cisco Systems, Inc. (“Cisco”) in the above-captioned case. The matters set forth herein are  
5 within my personal knowledge and if called and sworn as a witness I could competently testify  
6 regarding them.

7 2. Attached to this declaration as **Exhibit 1** is a true and correct copy of Arista’s  
8 Q3’2015 Highlights, dated November 2015.

9 3. Attached to this declaration as **Exhibit 2** is a true and correct copy of Cisco’s  
10 Fourth Supplemental Objections and Responses to Arista’s First Set of Interrogatories (2 and 5),  
11 served on Arista October 14, 2015.

12 4. Attached to this declaration as **Exhibit 3** is a true and correct copy of the certified  
13 copy of U.S. patent no. 7,047,526.

14 5. Attached to this declaration as **Exhibit 4** is a true and correct copy of the certified  
15 copy of U.S. patent no. 7,953,886.

16 6. Attached to this declaration as **Exhibit 5** is a true and correct copy of an article  
17 from Network World entitled “How Arista Networks got out in front of the SDN craze: Arista  
18 CEO Jayshree Ullal says ‘cloud networking leader’ complements Cisco” and dated February 22,  
19 2013. This article was produced by Cisco in this case and bears Bates numbers CSI-ANI-  
20 00381280-83.

21 7. Attached to this declaration as **Exhibit 6** is a true and correct copy of an email  
22 chain involving, *inter alia*, Jayshree Ullal, Anshul Sadana, Mark Foss, Andreas Bechtolsheim, and  
23 Adam Sweeney, dated July 17-21, 2009. Exhibit 6 bears Bates numbers ANI-ITC-944\_945-  
24 3453648-50. That document was designated by Arista in U.S.I.T.C. Inv. Nos. 337-TA-944 and  
25 337-TA-945 as containing “CONFIDENTIAL BUSINESS INFORMATION – SUBJECT TO  
26 PROTECTIVE ORDER.” Pursuant to the Protective Order (Dkt. 53 at 6), this document is  
27 deemed to have been designated by Arista in this case as “HIGHLY CONFIDENTIAL –  
28 ATTORNEYS’ EYES ONLY” information.

1           8.       Attached to this declaration as **Exhibit 7** is a true and correct copy of Fortune  
2 Magazine's March 20, 2014 article entitled "An Ex-Cisco Exec Reflects." This article was  
3 produced by Cisco in this case and bears Bates numbers CSI-CLI-00356028-33.

4           9.       Attached to this declaration as **Exhibit 8** is a true and correct copy of an e-mail  
5 from James Lingard to eng@arista.com, dated April 14, 2006. Exhibit 8, which bears Bates  
6 numbers ANI-ITC-944\_945-1713891-92, has been excerpted from a document produced by Arista  
7 that bears Bates numbers ANI-ITC-944\_945-1713831-6142. That document was designated by  
8 Arista in U.S.I.T.C. Inv. Nos. 337-TA-944 and 337-TA-945 as containing "CONFIDENTIAL  
9 BUSINESS INFORMATION – SUBJECT TO PROTECTIVE ORDER." Pursuant to the  
10 Protective Order (Dkt. 53 at 6), this document is deemed to have been designated by Arista in this  
11 case as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information. Cisco has  
12 filed a partially-redacted copy of Exhibit 8 under seal.

13           10.      Attached to this declaration as **Exhibit 9** is a true and correct copy of a blog  
14 posting by Arista CTO Kenneth Duda entitled "Linux as a Switch Operating System: Five Lessons  
15 Learned," dated November 5, 2013 and available at [https://eos.arista.com/linux-as-a-switch-](https://eos.arista.com/linux-as-a-switch-operating-system-five-lessons-learned/)  
16 [operating-system-five-lessons-learned/](https://eos.arista.com/linux-as-a-switch-operating-system-five-lessons-learned/). This article was produced by Cisco in this case and bears  
17 Bates number CSI-CLI-00540078-79.

18           11.      Attached to this declaration as **Exhibit 10** is a true and correct copy of excerpts  
19 from the transcript of the September 30, 2015 hearing in the above-captioned case.

20           12.      Attached to this declaration as **Exhibit 11** is a true and correct copy of excerpts  
21 from the transcript of Arista's presentation at the Barclays Global Tech Conference on December  
22 9, 2014. This document was produced by Cisco in this case and bears Bates numbers CSI-CLI-  
23 00357842 – CSI-CLI-00357855

24           13.      Attached to this declaration as **Exhibit 12** is a true and correct copy of an October  
25 15, 2015 letter from Elizabeth McCloskey, counsel for Arista, to Matthew Cannon, counsel for  
26 Cisco.

27           14.      Attached to this declaration as **Exhibit 13** is a true and correct copy of a September  
28 14, 2015 email from David Rosen, counsel for Arista, to Jason Liu, counsel for Cisco.

1           15.     Attached to this declaration as **Exhibit 14** is a true and correct copy of an October  
2 16, 2015 email from Elizabeth McCloskey, counsel for Arista, to Cisco's counsel.

3           16.     Attached to this declaration as **Exhibit 15** is a true and correct copy of an October  
4 21, 2015 email from David Rosen, counsel for Arista, to Peter Klivans, counsel for Cisco.

5           17.     Attached to this declaration as **Exhibit 16** is a true and correct copy of July 21,  
6 2015 letter from Matthew Cannon, counsel for Cisco, to Elizabeth McCloskey, counsel for Arista.

7           18.     Attached to this declaration as **Exhibit 17** is a true and correct copy of an October  
8 30, 2015 letter from Peter Klivans, counsel for Cisco, to Elizabeth McCloskey, counsel for Arista.

9           19.     Attached to this declaration as **Exhibit 18** is a true and correct copy of excerpts  
10 from the transcript of transcript of the November 5, 2015 hearing in the above-captioned case.

11           20.     Attached to this declaration as **Exhibit 19** is a true and correct copy of an email  
12 chain involving Adam Sweeney and Kenneth Duda, dated July 9-12, 2010. Exhibit 19 bears Bates  
13 numbers ANI-ITC- 944\_945-3599339-40. That document was designated by Arista in U.S.I.T.C.  
14 Inv. Nos. 337-TA-944 and 337-TA-945 as containing "CONFIDENTIAL BUSINESS  
15 INFORMATION – SUBJECT TO PROTECTIVE ORDER." Pursuant to the Protective Order  
16 (Dkt. 53 at 6), this document is deemed to have been designated by Arista in this case as  
17 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information. This document was  
18 ordered unsealed, Dkt. 86.

19           21.     Attached to this declaration as **Exhibit 20** is a true and correct copy of Cisco's  
20 Preliminary Election of Asserted Claims, served on Arista on November 4, 2015.

21           22.     Attached to this declaration as **Exhibit 21** is a true and correct copy of excerpts  
22 from the transcript of the May 14, 2015 Case Management Conference in the above-captioned  
23 case.

24           23.     Attached to this declaration as **Exhibit 22** is a true and correct copy of Arista's  
25 Second Set of Interrogatories, served on Cisco on July 24, 2015.

26           24.     To date, Arista has not served a corporate 30(b)(6) deposition notice on Cisco, nor  
27 has Arista requested an opportunity to inspect the source code records or change logs that were  
28

1 identified in Cisco's interrogatory responses as containing information about the creation of its  
2 CLI command expressions.

3 25. Arista deposed Jung Tjong on November 11, 2015 and Jeffrey Wheeler on  
4 November 12, 2015. Kirk Loughheed's deposition is scheduled for November 20, 2015 and  
5 Kevin Almeroth's deposition is scheduled for November 23, 2015. Documents for these  
6 witnesses have been produced well in advance of their depositions.

7 26. To date, Cisco has produced 1,329,754 pages of documents in this case, excluding  
8 documents previously produced in the ITC case and documents produced in native format.

9 27. On June 4, 2015 and September 11, 2015, Cisco served Infringement Contentions  
10 and Amended Infringement Contentions on Arista. On July 20, 2015 and October 23, 2015,  
11 Arista served Invalidity Contentions an Amended Invalidity Contentions on Cisco.

12  
13 I declare under penalty of perjury under the laws of the United States of America that the  
14 foregoing is true and correct and that I executed this declaration on November 18, 2015 at  
15 Redwood Shores, California.

16  
17 /s/ Mark Tung  
18 Mark Tung  
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**SIGNATURE ATTESTATION**

Pursuant to Civ. L.R. 5-1(i)(3), the undersigned hereby attests under penalty of perjury that concurrence in the filing of this document has been obtained from the signatory indicated by the “conformed” signature (/s/) of registered ECF User Mark Tung (Bar No. 245782).

/s/ John M. Neukom  
John M. Neukom (Bar No. 275887)